

Office of Personnel Management

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whether the position was in the GS pay system; or

(ii) The highest rate of basic pay in effect when a GS employee held his or her highest GS grade and highest step within that grade.

(2) The highest previous rate must be a rate of basic pay received by an employee while serving on a regular tour of duty—

(i) Under an appointment not limited to 90 days or less; or

(ii) For a continuous period of not less than 90 days under one or more appointments without a break in service.

(b) For periods of service as a GS employee, the highest previous rate may not be a special rate, except as provided in paragraph (c) of this section. If the highest previous rate is a locality rate, the underlying GS rate or an LEO special base rate associated with that locality rate must be used as the highest previous rate in applying §531.221(b).

(c) An agency may use a GS employee's special rate established under 5 U.S.C. 5305 and 5 CFR part 530, subpart C, or 38 U.S.C. 7455 as the highest previous rate when all of the following conditions apply:

(1) The employee is reassigned to another position in the same agency at the same grade level;

(2) The special rate is the employee's rate of basic pay immediately before the reassignment; and

(3) An authorized agency official finds that the need for the services of the employee, and the employee's contribution to the program of the agency, will be greater in the position to which reassigned. An agency must make such determinations on a case-by-case basis. In each case, the agency must document the determination to use the special rate as an employee's highest previous rate in writing.

(d) When an agency is barred from using a special rate established under 5 U.S.C. 5305 and 5 CFR part 530, subpart C, or 38 U.S.C. 7455 as an employee's highest previous rate under §531.223(g), the agency must consider a special rate employee's underlying GS rate (or LEO special base rate, if applicable) in determining the employee's highest pre-

vious rate for the purpose of applying paragraph (b) of this section.

[70 FR 31291, May 31, 2005, as amended at 70 FR 74995, Dec. 19, 2005]

§531.223 Rates of basic pay that may not be used as the highest previous rate.

The highest previous rate may not be based on the following:

(a) A rate received under an appointment as an expert or consultant under 5 U.S.C. 3109;

(b) A rate received in a position to which the employee was temporarily promoted for less than 1 year, except upon permanent placement in a position at the same or higher grade;

(c) A rate received in a position from which the employee was reassigned or reduced in grade for failure to satisfactorily complete a probationary period as a supervisor or manager;

(d) A rate received by an individual while employed by the government of the District of Columbia who was first employed by that government on or after October 1, 1987;

(e) A rate received by an individual while employed by a Department of Defense or Coast Guard nonappropriated fund instrumentality;

(f) A rate received solely during a period of interim relief under 5 U.S.C. 7701(b)(2)(A);

(g) A special rate established under 5 U.S.C. 5305 and 5 CFR part 530, subpart C, or 38 U.S.C. 7455 (except as provided in §531.222(c));

(h) A rate received under a void appointment or a rate otherwise contrary to applicable law or regulation;

(i) A rate received as a member of the uniformed services; or

(j) A retained rate under 5 U.S.C. 5363 or a similar rate under another legal authority.

[70 FR 31291, May 31, 2005, as amended at 73 FR 66153, Nov. 7, 2008]

SPECIAL RULES FOR GM EMPLOYEES

§531.241 Retaining and losing GM status.

(a) An employee retains status as a GM employee (as defined in §531.203) when detailed to any position or when reassigned to another GS position in which the employee continues to be a

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supervisor or management official (as defined in 5 U.S.C. 7103(a)(10) and (11)).

(b) An employee permanently loses status as a GM employee if he or she is promoted (including a temporary promotion), transferred, demoted, reassigned to a position in which the employee will no longer be a supervisor or management official, has a break in service of more than 3 days, or becomes entitled to a retained rate under 5 CFR part 536. (A retained grade is not considered in determining whether a GM employee has been reduced in grade. See 5 CFR 536.205.)

§ 531.242 Setting pay upon loss of GM status.

(a) On loss of status as a GM employee under § 531.241 (except as provided in paragraph (b) of this section), an employee must receive his or her existing payable rate of basic pay, plus any of the following adjustments that may be applicable on the effective date of the loss of status, in the order specified:

(1) The amount of any annual adjustment in GS rates under 5 U.S.C. 5303, and the amount of any adjustment in locality payments or special rate supplements, to which the employee otherwise would be entitled on that date;

(2) The amount of any within-grade increase to which the employee otherwise would be entitled on that date under 5 U.S.C. 5335 and subpart D of this part;

(3) The amount resulting from a promotion effective on that date (consistent with § 531.243(c));

(4) In the case of an employee who loses GM status without a change of grade and whose GS rate falls between two steps of a GS grade, the amount of any increase needed to pay the employee the rate for the next higher step of that grade; and

(5) In the case of an employee whose resulting GS rate is below the minimum rate of a GS grade, the amount of any increase needed to pay the employee the minimum rate for that grade.

(b) For an employee who loses status as a GM employee as a result of a demotion, pay must be set as provided in § 531.215. A GM employee's off-step GS rate at the grade before demotion is

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not converted to a GS step rate before the demotion, but the employee must be placed on a GS step rate when pay is set in the lower grade.

§ 531.243 Promotion of a GM employee.

(a) Upon promotion, an employee's status as a GM employee ends, as provided in § 531.241(b).

(b) When an employee loses status as a GM employee because of a temporary promotion and is returned to the lower grade upon expiration or termination of the temporary promotion under § 531.215(c)(1), he or she will be deemed to have been placed at the lowest step rate that equals or exceeds the employee's former GS rate (as a GM employee) on the effective date of the temporary promotion, before applying any other step increases based on his or her service during the temporary promotion.

(c) A GM employee's GS rate is used as the existing rate of pay in applying the promotion rule in § 531.214. A GM employee's off-step GS rate in the grade before promotion is not converted to a GS step rate in applying the promotion rule, but the employee must be placed on a GS step rate in the post-promotion grade.

§ 531.244 Adjusting a GM employee's rate at the time of an annual pay adjustment.

(a) On the effective date of an annual pay adjustment under 5 U.S.C. 5303 or similar authority, an agency must set the new GS rate for a GM employee as follows:

(1) For a GM employee whose GS rate equals a regular GS step rate, set the employee's rate at the new step rate in the adjusted General Schedule that corresponds to the employee's grade and step as in effect immediately before the effective date of the pay adjustment.

(2) For a GM employee whose GS rate is below the minimum rate of the GS rate range for the employee's grade, increase the existing GS rate by the same percentage as the annual pay adjustment for the GS rate range applicable to the employee's grade, with the result rounded to the nearest dollar (not to exceed the minimum rate of the range).